

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID MICHAEL STEINHAUER,

Petitioner,

vs.

E. K. McDANIEL, *et al.*,

Respondents.

3:08-cv-00619-LRH-VPC

ORDER

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On April 6, 2011, the court issued an order denying petitioner's motion to stay proceedings and denying petitioner's motions for appointment of counsel (ECF No. 69). Petitioner now moves the court for a certificate of appealability (ECF No. 71) and leave to proceed *in forma pauperis* on appeal (ECF No. 72).

First, under 28 U.S.C. § 2253(c)(1)(A), unless a certificate of appealability issues, an appeal may not be taken from "the *final order* in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court." (Emphasis added). "This provision governs final orders that dispose of the merits of a habeas corpus proceeding--a proceeding challenging the lawfulness of the petitioner's detention." *Harbison v. Bell*, 129 S. Ct. 1481, 1485 (2009). In *Harbison*, the Court held that "[a]n order that merely denies a motion to enlarge the authority of appointed counsel (or that denies a motion for appointment of counsel) is not such an order and is therefore not subject to the [certificate of appealability] requirement." *Id.* In this case, the court's order denying petitioner's motion to stay proceedings and motions for appointment of counsel is not a final order because it does not dispose of the merits of this habeas corpus action. Therefore, a certificate of appealability is not required.

1 Accordingly, the court denies petitioner's motion for a certificate of appealability.

2 Second, petitioner's motion for leave to proceed *in forma pauperis* is not in conformity with the
3 Fed. R. App. Pro. 24 which, among other things, requires submission of detailed information related to
4 petitioner's financial means. *See* Fed. R. App. Pro. Rule 24; and Form 4 in the Appendix of Forms.
5 Therefore, the motion (ECF No. 72) shall be denied without prejudice on that basis.

6 **IT IS THEREFORE ORDERED** that petitioner's motion for a certificate of appealability (ECF
7 No. 71) is **DENIED**.

8 **IT IS FURTHER ORDERED** that the petitioner's motion for leave to proceed *in forma*
9 *pauperis* on appeal (ECF No. 72) is **DENIED** without prejudice. The **Clerk shall** send Form 4
10 (Affidavit Accompanying Motion for Permission to Appeal *In Forma Pauperis*) to petitioner.
11 Petitioner shall have **thirty (30) days** from the date of entry of this order within which to file a
12 motion for leave to proceed *in forma pauperis* on appeal.

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14 DATED this 31st day of May, 2011.



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17 LARRY R. HICKS
18 UNITED STATES DISTRICT JUDGE
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